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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-fourth session

SUMMARY RECORD OF THE 3rd MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 4 August 1992, at 3 p.m.

Chairman: Mr. ALFONSO MARTINEZ

later: Mrs. KSENTINI
Mr. SACHAR

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The meeting was called to order at 3.20 p.m.

REVIEW OF THE WORK OF THE SUB-COMMISSION (agenda item 3) (continued) (E/CN.4/Sub.2/1992/3 and Add.1)

1. Mr. SABOIA said that the report of the inter-sessional Working Group (E/CN.4/Sub.2/1992/3) was carefully drafted and contained concrete proposals that had been discussed thoroughly; it would therefore be appropriate to take up the report in plenary. To establish a sessional working group would be a duplication of effort. The question of the possible creation of a global report could be addressed in a sessional working group at a future session.

2. Mrs. Ksentini took the Chair.

3. Mr. ALFONSO MARTINEZ said that he would take special care to separate his responsibilities as a member of the Sub-Commission from his tasks as Chairman. The matter under consideration was of the utmost importance and would affect the work of the Sub-Commission in the future, and he therefore felt it appropriate to present his views as a member of the Sub-Commission.

4. Despite assertions to the contrary, paragraph 6 of Commission on Human Rights resolution 1992/66 contained nothing that prevented the Sub-Commission from creating an open-ended working group to consider the report of the inter-sessional Working Group and to make its findings known to the plenary. It was clear from paragraph 7 of Commission resolution 1992/66 that the Sub-Commission could accept, reject, amend or delete any recommendations made by the inter-sessional Working Group. He drew attention to the remarks on that subject by the representative of Germany at the forty-eighth session of the Commission on Human Rights, as reflected in summary record of the meeting (para. 28, E/CN.4/1992/SR.54), to the effect that it was entirely clear from paragraph 6 of Commission resolution 1992/66 that the sponsors of that resolution had no intention whatsoever to prejudge any decisions that might be taken by the Sub-Commission regarding the recommendations of the inter-sessional Working Group. Hence, the Sub-Commission could discuss the question as it saw fit, whether directly in plenary or first in a working group and later in plenary; it would be inappropriate to interpret paragraph 6 as precluding prior consideration in a sessional working group.

5. Mr. Joinet had maintained that in the Commission the Cuban delegation had stated that it was not necessary to create a working group, but that discussion of the subject could begin directly in plenary. That was incorrect, and he wished to set the record straight.

6. The main advantage of creating a sessional working group would be that it could devote more time to a thorough analysis of what was a controversial subject and draft amendments, as appropriate, to the report. Such a working group might also consider the draft proposal submitted by Mr. Chernichenko in document E/CN.4/Sub.2/1992/3/Add.1 and the proposal contained in paragraph 12 (a) of the report of the inter-sessional Working Group (E/CN.4/Sub.2/1992/3).

7. Mr. YIMER said that the reason for establishing the inter-sessional Working Group was that the methods of work of the Sub-Commission deserved thorough study, which could not be accomplished by a sessional working group. The intention of Commission on Human Rights resolution 1992/66 was clear: the report of the inter-sessional Working Group was to be submitted directly to the Sub-Commission for consideration in plenary. If the Sub-Commission had wanted to have the subject studied by a sessional working group, it should not have asked the Commission to allow it to establish the inter-sessional Working Group in the first place, because that was a waste of resources. It did not make sense to create a sessional working group to study the report of the inter-sessional Working Group. Needless to say, the proposal of Mr. Chernichenko, which had not been considered in the inter-sessional Working Group, could be referred to a sessional working group.

8. Mr. Alfonso Martínez resumed the Chair.

9. Mr. DESPOUY agreed with Mr. Yimer that the Commission's intention had been that the report of the inter-sessional Working Group should be referred directly to the plenary. He noted that in paragraph 28 of summary record E/CN.4/1992/SR.54, the representative of Germany had stated that the list of proposals drawn up by the inter-sessional Working Group would be submitted to all the experts for consideration and to the Sub-Commission for adoption, and that in paragraph 29 of the same record, the representative of France had agreed with the representative of Germany that the Working Group's proposals would be considered by all the experts and it would be for the Sub-Commission as a whole to decide whether they should be adopted. It was important to respect the spirit of the resolution. Clearly no one would want to be absent from any sessional working group that would discuss such an important issue, and thus the composition of such a working group would be identical with that of the Sub-Commission itself. He agreed with Mr. Heller's suggestion to discuss the report first in plenary and to create a working group only if agreement could not be reached there; he proposed putting the matter to a vote.

10. Mrs. KSENTINI said that the Sub-Commission should avoid beginning the session with a vote, which would have an adverse impact on its later work. She proposed that the Sub-Commission should accept the idea of discussing the report of the inter-sessional Working Group in plenary while not ruling out the possibility of creating a sessional working group or informal drafting group, as necessary and in the light of the debate in plenary.

11. After a procedural discussion in which Mr. JOINET, the CHAIRMAN, Mr. HELLER, Mr. EIDE, Mr. DESPOUY, Mrs. KSENTINI, Mr. MAXIM and Mr. KHALIFA took part, the CHAIRMAN suggested that, in order to avoid a divisive vote, the Sub-Commission should adopt a compromise solution whereby it would consider item 3, including the proposals contained in the inter-sessional Working Group's report, in plenary, leaving the taking of any other decision that might prove necessary until a later stage.

12. It was so decided.

13. Mr. EIDE, speaking on a point of order, noted that the Chairman had correctly invited a Vice-Chairman to take the Chair when he had spoken in his personal capacity. He suggested that in future, if the Chairman had strong

feelings on an item under consideration and wished to speak on it in his personal capacity, the conduct of the whole of the proceedings under that item should be entrusted to a Vice-Chairman.

14. The CHAIRMAN said that he had taken note of that point, which was a matter on which he would have to decide.

HUMAN RIGHTS AND SCIENTIFIC AND TECHNOLOGICAL DEVELOPMENTS (agenda item 12) (E/CN.4/Sub.2/1992/26; E/CN.4/1991/38)

ENCOURAGEMENT OF UNIVERSAL ACCEPTANCE OF HUMAN RIGHTS INSTRUMENTS (agenda item 13) (E/CN.4/Sub.2/1992/27 and Corr.1)

15. Mr. CISSE (Centre for Human Rights), introducing the two items, recalled that item 12 had been considered by the Sub-Commission at various sessions. At its forty-seventh session the Commission on Human Rights, in resolution 1991/45, requested the Sub-Commission to consider the item at its present session. For that purpose, the Sub-Commission had before it a note by the Secretary-General contained in document E/CN.4/Sub.2/1992/26.

16. In resolution 1990/24, the Sub-Commission decided to continue the consideration of item 13 at its current session and had requested the Chairman of the Sub-Commission to appoint one of its members to report on the question at it. The Sub-Commission had before it a note by the Secretary-General (E/CN.4/Sub.2/1992/27 and Corr.1) relating to communications with Member States on the ratification of, and accession to, human rights instruments. The note also contained an updated table recording developments in that regard on a country-by-country basis.

17. Mr. JOINET, speaking on agenda item 12, said that in its resolution 45/95 the General Assembly had adopted the revised guidelines for the regulation of computerized personal data files contained in document E/CN.4/1990/72. Those guidelines fell into two parts: the first laid down guiding principles to assist Governments in drawing up legislation on the question, while the second proposed measures to be taken with regard to the data files of the international organizations themselves. Now that those guidelines had come into force, the time had come to request the Secretary-General to report to the Sub-Commission on the state of their implementation within the United Nations system as a whole. Discussion and preparation of a draft decision to that effect should perhaps take place under agenda item 13 rather than agenda item 12.

18. The CHAIRMAN informed the Sub-Commission that Mrs. Ksentini had been appointed to report on the situation with regard to item 13.

19. Mr. MAXIM, speaking on item 13, said that the first step in securing the observance of human rights was the ratification of existing international instruments. Nevertheless, many States had not ratified those instruments, despite all the appeals made. It might therefore be helpful if the Secretariat, by way of encouragement, could publish lists of Member States that had not ratified the respective instruments, in addition to those that had done so.

20. Mr. GUISSE said that the real problem was not so much the ratification of existing instruments as giving them real legal force in domestic law. Many States that had ratified numerous international instruments were major violators of human rights, and formal ratification meant nothing to them. In particular, Member States should endeavour to ensure that individuals could benefit uninterruptedly from the provisions of the two International Covenants on Human Rights. The most effective means of achieving that would be to encourage States to incorporate international standards in their domestic legislation, so that they could be invoked and applied in local courts. Any State subject to the rule of law could permit that. If the domestic legislation of any State was not in conformity with international standards, that State could be deemed a State subject to the rule of law in only relative terms. Moreover, it was clear from the law of treaties that when a State accepted an international instrument it must incorporate the content thereof in its domestic legislation. Pacta sunt servanda.

21. Mrs. KSENTINI said that, with the assistance of the Secretariat she had been able to collect some additional information on ratifications and accessions to human rights instruments since the closure of the forty-second session of the Sub-Commission.

22. Thus, at 15 July 1992, there had been 112 States parties to the International Covenant on Economic, Social and Cultural Rights; 66 States parties to the First Optional Protocol to the International Covenant on Civil and Political Rights; 11 States parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty (which had entered into force on 11 July 1991); 132 States parties to the International Convention on the Elimination of All Forms of Racial Discrimination; 93 States parties to the International Convention on the Suppression and Punishment of the Crime of Apartheid; 67 States parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and 120 States parties to the Convention on the Rights of the Child.

23. She had no new information with regard to the request addressed by the Sub-Commission to States that had not ratified or acceded to human rights instruments to indicate their reasons for failing to do so, since in the course of the previous year not one State had responded to the invitation contained in the Secretary-General's note dated 30 April 1991.

24. In its draft resolution on the item at the current session, the Sub-Commission would very probably wish to update the list of international human rights instruments contained in document E/CN.4/Sub.2/1992/27, which at present did not include the two most recent instruments, namely, the Second Optional Protocol to the International Covenant on Civil and Political Rights, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

25. Ms. CHAVEZ said that it would be a mistake to assume that the mere fact that a State had signed or ratified a human rights instrument automatically meant that it was abiding by the spirit of that instrument. With regard to

Mr. Maxim's suggestion, the Sub-Commission must take care to avoid giving the impression that it regarded failure to sign or ratify an instrument as a greater sin than failure to abide by the letter or spirit of that instrument.

26. Mr. BOSSUYT welcomed the fact that the number of States parties to international human rights instruments continued to increase, and that there were now more than 100 States parties to several of those instruments. Even the once unpopular First Optional Protocol to the International Covenant on Civil and Political Rights now had 66 States parties.

27. He supported Mrs. Ksentini's proposal that the list of human rights instruments contained in document E/CN.4/Sub.2/1992/27 should be updated to include more recent instruments drawn up by the Commission on Human Rights and the Sub-Commission, such as the Second Optional Protocol to the International Covenant on Civil and Political Rights.

28. It was a matter of concern that no information had been received from States in reply to the note by the Secretary-General dated 30 April 1991. Paragraph 6 of document E/CN.4/Sub.2/1992/27 referred to the contacts of the Under-Secretary-General for Human Rights with Member States. Those contacts were to some extent confidential, but it would be useful for the Sub-Commission to have some idea of the occasions on which they had been made, and of their frequency.

29. Mr. Maxim's suggestion that a list should be prepared of States that had not ratified or acceded to human rights instruments might be one way of encouraging those States to become parties to the conventions. It was still more important, however, to ensure that accession and ratification were not accompanied by reservations incompatible with full respect for the standards set forth in the conventions and for the primacy of international law.

30. Mr. SACHAR thought it most important for the Sub-Commission to have access to a list of States that had not ratified the various human rights instruments. If States claimed to comply fully with those instruments, yet were nevertheless reluctant to ratify them, the Sub-Commission was entitled to know the reasons for their reluctance. Furthermore, it was a matter of grave concern that no State had responded to the Secretary-General's request for fuller information. The Sub-Commission should take note of that state of affairs and make a formal protest.

31. Mrs. KSENTINI said that, even though in practice some States failed to apply all the provisions of the instruments to which they had acceded, universal accession was nevertheless a necessary step towards full compliance with the spirit of the human rights instruments, and must therefore be encouraged. She supported Mr. Maxim's suggestion regarding the preparation of a list of States that had not acceded to the conventions. The Working Group on Contemporary Forms of Slavery, as well as other United Nations organs, had already adopted such a procedure, which made for a clearer appreciation of the true situation. Once the main human rights instruments had been more or less universally accepted, consideration could then be given to means of strengthening their implementation. Special attention should be devoted to

problems associated with the submission of country reports to the treaty monitoring bodies, and to the possibility of providing advisory services to States experiencing technical difficulties in the preparation of their reports. It would also be necessary to strengthen the functioning of the treaty monitoring bodies themselves, and to find early solutions to the financial and other problems currently experienced by bodies such as the Committee on the Elimination of Racial Discrimination.

32. Mr. Sachar took the Chair.

33. Ms. SCHERER (Amnesty International) said that the rights set forth in the two International Covenants on Human Rights were interdependent and related, and that Amnesty International sought the ratification of both, although the specific rights it was mandated to protect were to be found in the International Covenant on Civil and Political Rights. Ratification of human rights instruments was a basic but essential step which every Government could take to demonstrate its commitment to protecting human rights. As the World Conference on Human Rights drew closer, all States Members of the United Nations should ratify the fundamental human rights treaties, and States that had already done so should carefully examine any limiting reservations made at the time of ratification, with a view to their withdrawal.

34. While there had been a welcome increase in the number of ratifications and accessions during 1991 and the first part of 1992, it was a matter for considerable regret that international human rights standards were still not universally accepted. Taking the two International Covenants on Human Rights, the two Optional Protocols to the International Covenant on Civil and Political Rights and the Convention against Torture as a group, no permanent member of the United Nations Security Council was a party to all five of those instruments, although France and the Russian Federation had ratified or acceded to all but the Second Optional Protocol to the International Covenant on Civil and Political Rights. Of the current members of the Commission on Human Rights, only four of its 53 members - Australia, Finland, the Netherlands and Portugal - were parties to all five instruments. Ratifications of one or more instruments during 1992 by Angola, Brazil, Bulgaria, Chile, Cyprus, Guinea-Bissau and the United States of America were a welcome step, but it was particularly important that every member of those bodies should give priority to becoming a State party to all the treaties in the very near future.

35. The ratification of international human rights treaties should be an occasion for a State to review its own legislation and practice, so as to ensure that they were in full conformity with the standards set by the international community. States should thus ratify those instruments without limiting reservations, declarations or understandings, which undermined the guarantees contained in the treaties and called into question the willingness of a State to comply fully with the international obligations contained therein. Consequently, Amnesty International was concerned at the unusually large number of limiting reservations, understandings and declarations that had accompanied the ratification of the International Covenant on Civil and Political Rights by the United States of America. It was particularly concerned at the reservation regarding article 6 of the Covenant, which, inter alia, prohibited the execution of juvenile offenders, and from which no derogation was ever permitted. Other legally binding international standards,

such as the Convention on the Rights of the Child, stated that the application of the death penalty for crimes committed by persons under 18 years of age violated minimum international standards for the protection of human rights applicable to all Member States.

36. States parties should also take all necessary steps to cooperate fully with the treaty monitoring bodies, which played an essential role in ensuring a common standard of implementation. To that end, States parties should accord high priority to prompt compliance with all reporting obligations and to implementing the recommendations of those bodies.

37. Mr. WANG Hao (International Fellowship of Reconciliation) said that the five permanent members of the Security Council must play a leading role in encouraging all States to ratify or accede to the major international human rights instruments. His organization thus warmly welcomed the ratification of the Convention on the Rights of the Child by China, France, the Russian Federation and the United Kingdom since the Sub-Commission's forty-third session. It particularly welcomed the ratification of the International Covenant on Civil and Political Rights by the United States of America on 8 June 1992, since that country's failure to ratify the Covenant had long been adduced as an argument against accession by other States.

38. On the negative side, however, his organization was greatly concerned at the failure of several of the permanent members of the Security Council to accede to the First Optional Protocol to the International Covenant on Civil and Political Rights. It was particularly concerned at the failure of the People's Republic of China to become a party to either of the two Covenants. It was vitally important that China, as a permanent member of the Security Council, should play a leading role by fulfilling its promise to become a party to the Covenants, and by encouraging other States to do likewise.

39. The impact of accession or ratification could of course be severely limited where the State concerned entered significant substantive reservations. In that regard, he drew attention to the reservations entered by permanent members of the Security Council, particularly the United Kingdom. It was to be hoped that all States would review their reservations to international human rights instruments with a view to reducing them, and that the permanent members of the Security Council would include few or no reservations when ratifying or acceding to such instruments.

The meeting rose at 5.15 p.m.